

## Penalty Policy

- Oil Pollution Act of 1990 amended Section 311 of the CWA after the Exxon Valdez spill occurred.
- Section 311(b)(3) prohibits the discharge of threshold amounts of oil or hazardous substances to navigable waters of the U.S.

Section 311(b)(3) civil penalty assessment is based on:

1. Seriousness of violation
  - Potential environment impact
    - This factor is based on the risk to the environment caused by the spill and not the actual harm it caused. Further divided into the following:
      - Major impact. The discharge proposed a significant threat to human health, an actual or potential drinking water supply, sensitive ecosystem or wildlife
      - Moderate impact. The discharge posed a significant threat to navigable waters, adjoining shorelines or vegetation.
      - Minor impact. All other discharges resulting in the entry of oil or hazardous substances into navigable waters or upon adjoining shorelines in a reportable quantity.
2. Degree of culpability
  - If gross negligence or willful misconduct, triple the dollar amount
  - If gross negligence or willful misconduct were not involved, a sliding scale is used up to 50%.
3. Mitigation
  - Amount is adjusted based on the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge
4. History of prior violations
  - Amount may be increased as much as 100% based on a relevant history of violations within the five years prior to the spill.
5. Adjustments to gravity
  - Other penalty for the same incident. If a penalty was paid to a State or local government for a violation arising out of the same incident, EPA may use the prior penalty to offset the federal penalty by as much as may be appropriate.
  - Economic impact to the violator.
  - Other factors determined by EPA
6. Economic Benefit
  - Violators obtain an economic benefit by avoiding or delaying necessary compliance costs, obtaining illegal profit, obtaining competitive advantage or a combination of these factors. The benefit from any of these factors can be added to the amount of the penalty.